

EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

1		
2		
3	GEOTAG, INC.	. CIVIL DOCKET NO. 2:10CV265
4	VS.	. TEXARKANA, TEXAS
5	FRONTIER COMMUNICATIONS	. NOVEMBER 9, 2011
6	CORP., ET AL	. 11:14 A.M.
7	GEOTAG, INC.	.
8	VS.	. CIVIL DOCKET NO. 2:10CV272
9	YELLOWPAGES.COM LLC	.
10	GEOTAG, INC.	.
11	VS.	. CIVIL DOCKET NO. 2:10CV569
12	GEORGIO ARMANI S.P.A., ET AL	.
13	GEOTAG, INC.	.
14	VS.	. CIVIL DOCKET NO. 2:10CV570
15	AROMATIQUE, INC., ET AL	.
16	GEOTAG, INC.	.
17	VS.	. CIVIL DOCKET NO. 2:10CV571
18	GUCCI AMERICA, INC., ET AL	.
19	GEOTAG, INC.	.
20	VS.	. CIVIL DOCKET NO. 2:10CV572
21	STARBUCKS CORP., ET AL	.
22	GEOTAG, INC.	.
23	VS.	. CIVIL DOCKET NO. 2:10CV573
24	RENT-A-CENTER, INC., ET AL	.
25	GEOTAG, INC.	.

EXHIBIT H

1 VS. . CIVIL DOCKET NO. 2:10CV574
2 THE WESTERN UNION COMPANY, .
ET AL .
3 GEOTAG, INC. .
4 VS. . CIVIL DOCKET NO. 2:10CV575
5 ROYAL PURPLE, INC., ET AL .
6 GEOTAG, INC. .
7 VS. . CIVIL DOCKET NO. 2:10CV587
8 YAKIRA, L.L.C., ET AL .
9 GEOTAG, INC. .
10 VS. . CIVIL DOCKET NO. 2:11CV175
11 WHERE 2 GET IT, INC., ET AL .
12
13

14 APPEARANCES:

15 FOR PLAINTIFF: [SEE SIGN-IN SHEETS ATTACHED
16 TO MINUTES]
17

18 FOR DEFENDANTS: [SEE SIGN-IN SHEETS ATTACHED
19 TO MINUTES]
20

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25 PROCEEDINGS RECORDED BY STENOMASK, TRANSCRIPT PRODUCED WITH
CAT SYSTEM.

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P R O C E E D I N G S

TEXARKANA, TEXAS

NOVEMBER 9, 2011

(Open court)

THE COURT: Please be seated. I apologize yet again for running a little late. For those of you present during my first case of the morning, you understand why.

Very well, I look around and people ask me why on earth would I retire, and all I've got to do is -- all I have to do is look at these files.

Anyway, we are here for a scheduling conference and also there is a Motion to Stay. I am going to change the topic or order of topics slightly. I believe I would benefit from hearing the Motion to Stay first and have a little more history concerning this case, then I've got some comments about the scheduling that will follow.

So who is going to go forward on the Motion to Stay?

MS. ROSS: I apologize, Your Honor. We were having a little bit of technical difficulty.

THE COURT: Did I give fifteen minutes a side on this? Is that correct?

MS. ROSS: You did, Your Honor. And I hope I won't --

THE COURT: And you may reserve some reply time if you wish.

MS. ROSS: Thank you.

1 THE COURT: Are you speaking on behalf of everyone
2 that joined in the motion?

3 MS. ROSS: I am, Your Honor. My name is Evelyn Ross
4 with Vinson & Elkins on behalf of the Movants. The stay
5 should be granted in favor of the --

6 THE COURT: And are all the Defendants -- I
7 apologize.

8 MS. ROSS: No problem.

9 THE COURT: Are all the Defendants in the case
10 Movants, or part of the Defendants? If so, how many?

11 MS. ROSS: They are not, Your Honor. I believe there
12 are 81 moving Defendants.

13 THE COURT: Eighty-one. Thank you.

14 MS. ROSS: The stay should be granted in favor of the
15 moving Defendants and the Delaware action because the real
16 parties in interest in this matter, the service providers, are
17 in Delaware and they have affirmatively elected to defend
18 their products and services there, in part, because they have
19 received more than 200 indemnity requests from the Texas
20 Defendants, and they expect to receive thousands more.

21 The same patents are at issue in Delaware -- excuse me,
22 the same --

23 THE COURT: Well, tell me what's going on in
24 Delaware. I know from reading the papers there was a motion,
25 perhaps a jurisdictional motion filed, and in the alternative,

1 perhaps a venue motion filed by our Plaintiff in this case.

2 Has the Delaware Court acted on that yet?

3 MS. ROSS: The Court has not acted on either of those
4 motions yet. The same patent is at issue in Delaware, the
5 same technology is at issue in Delaware, and the majority of
6 the Texas Defendants here in these cases use the products and
7 services of the Delaware providers.

8 THE COURT: So if I understand, what you are
9 requesting is stay this case as to 81 Defendants, and what do
10 I do with, or some other judge, with the other 300 Defendants?

11 MS. ROSS: Your Honor, it's our position, I believe,
12 that you have inherent powers in the Court, and should you
13 choose to stay all now 18 --

14 THE COURT: So essentially what you are saying is
15 stay -- grant our motion, then stay everything. Is that what
16 you are --

17 MS. ROSS: If that's what Your Honor pleases, yes,
18 sir. As of the briefing for this motion, GeoTag had accused
19 some 365 Defendants in Texas for providing locator services on
20 their websites. During the briefing, the Movants warned this
21 Court that if left unchecked, GeoTag would continue to add
22 more and more Defendants to the Texas actions. GeoTag
23 countered that the Movants' accusations were just rank
24 speculation. However, and as expected, GeoTag continues to
25 bombard this Court with additional suits and a multitude of

1 additional Defendants, the most recent being the addition of
2 41 Defendants to an existing case last week. And by adding
3 these new Defendants to cases that have --

4 THE COURT: Well, what are we up to defendant-wise in
5 all the cases?

6 MS. ROSS: I believe we are at about 467.

7 MR. DURST: It's more than that.

8 MS. ROSS: Oh, it's more than that.

9 MR. DURST: It's well over 500.

10 MS. ROSS: Excuse me, Your Honor. Mr. Durst tells me
11 that it's over 500 now. By adding these new Defendants to
12 existing cases that were filed before September 16, the date
13 of enactment of the AIA, GeoTag is attempting to avoid the
14 mandates required under the AIA. These new parties could not
15 be joined together in one action because they are unrelated.
16 Had GeoTag filed separate actions against each defendant
17 group, the Court would have seen many, many more lawsuits.

18 The fact of the matter is, is the number of lawsuits and
19 the number of Defendants pending before this Court is
20 unmanageable for both the Court and the parties.

21 GeoTag has explained in its briefing that its strategy
22 and its efforts in Texas constitute its licensing and
23 enforcement program. In *Parallel Networks*, Judge Davis
24 recognized the inherent difficulties that exist with such a
25 strategy. Specifically, he noted that it makes the cost of

1 defense prohibitive for the Defendants because even the most
2 simple task, such as a discovery order, require hours and
3 hours of attorney time.

4 As you can see here, Your Honor, I'm not sure how many
5 attorneys are here, but it's well over 50. Moreover, he noted
6 that it places the defendants in a quandary. He said, look,
7 the defendants are faced with a choice. They either defend
8 the case at exorbitant costs or they settle for cost of
9 defense regardless of the liability.

10 The *Parallel Networks* case involved a little over a
11 hundred defendants. The problems here are compounded by the
12 more than 400 defendants in the Texas actions, and it looks
13 like those numbers are going to continue to rise. Here, we
14 have the advantage that three of the service providers have
15 affirmatively elected to file suit in Delaware and they stand
16 ready to defend their products and services. The customer --

17 THE COURT: Will we hear from -- we hear obviously
18 from the Plaintiff that this motion is probably premature and
19 all that supports it is, to use their terminology, lawyers'
20 talk. I assume, one, you feel it's not premature. If so,
21 why?

22 MS. ROSS: Well, it's not premature --

23 THE COURT: Obviously in the vast majority of these
24 cases, I believe there are two cases, the *Frontier* case and
25 the other defendant slips me --

1 MS. ROSS: I believe it's the *Yellowpages* case, Your
2 Honor.

3 THE COURT: -- *Yellowpages*, there have been
4 infringement contentions filed by the Plaintiff, but none in
5 the rest of the cases. So, I guess, why do you feel that this
6 is ripe for a decision? Other than obviously this is going to
7 be a hard case to manage, but over the years if I had stayed
8 every hard case I had to manage, my docket would have been a
9 lot smaller.

10 MS. ROSS: That's understandable, Your Honor. The
11 reason why this case needs to be stayed is because for the
12 vast majority of the Defendants that exist in the 18 cases in
13 front of this Court, the issues will be significantly
14 narrowed. The potential for damages could be exhaustive.

15 THE COURT: But how do we know that?

16 MS. ROSS: We know that based on the declarations
17 that Microsoft and Google and Where 2 Get It provided the
18 Delaware court in response to GeoTag's Motion to Dismiss.
19 They explain in those declarations that they are the real
20 parties in interest. They explain to the court in Delaware
21 that they are the ones that host the entire functionality of
22 the accused products on their website, and that the customer
23 involvement is really limited to providing store information,
24 store location information that is hosted on Microsoft servers
25 and databases.

1 The customer suit factors favor a stay in this case.
2 This case presents the classic scenario for the customer suit
3 exception, a case where the customer Defendants are accused
4 and have little, if any, knowledge of the accused products,
5 and a case where the customer Defendants simply resell and
6 repackage products from another entity. Many of the Texas
7 Defendants are mere customers who simply provide a branded
8 interface to reach the Provider's Locator Services. The
9 users' search parameters are simply routed to the Provider's
10 Locator Systems and then displayed to the user through the
11 customer's website. The most relevant knowledge about the
12 accused systems, their design, their operation and their
13 maintenance, involves Google, Microsoft and Where 2 Get It
14 knowhow.

15 As illustrated on this graphic, the online customers, in
16 many instances, act as a mere portal to the location services
17 provided by the Delaware declaratory judgment plaintiffs. The
18 providers explain to the Delaware court that all material
19 parts of the accused system and methods, that is, the claims,
20 are part of the provider system and no relevant customer
21 specific actions take place.

22 That fact can be illustrated, Your Honor, by this graphic
23 which shows that the Provider's Locator Services encompass the
24 entire service. In fact, a user can simply bypass the
25 customer's website and go directly to Google or go directly to

1 Microsoft to receive the same information.

2 Now, to avoid the Delaware action, GeoTag implied to the
3 Court in Delaware and to this Court that the allegations in
4 Delaware were simply limited to the presentation of maps by
5 defendants. While the Delaware Plaintiffs do in some
6 instances provide just mapping services, they also provide the
7 entire accused system that many of the Texas Defendants
8 utilize which prompted their indemnity requests for the
9 Delaware Plaintiffs and also prompted --

10 THE COURT: What about the some 36 percent of the
11 Defendants that don't use these products, what -- how does the
12 Delaware action, other than putting it off for a period of
13 time, help us in that regard, other than obviously the patent
14 is found invalid, I guess, is one possibility, but --

15 MS. ROSS: Exactly. And then in that instance it
16 would moot the entire case here. It would certainly limit
17 issues regarding enforceability and claim construction. There
18 may be no need at all for this Court after Judge Everingham's
19 earlier Order in the *Geomas* case, a potential Order by Your
20 Honor in the *Yellowpages* and *Frontier* cases, and then also the
21 possibility of an Order in Delaware, there may actually be no
22 other claim construction necessary once you get down to the
23 remaining Defendants.

24 THE COURT: I bet we have a lot of Defendants that
25 are going to say they want their day in court on claim

1 construction, would be my guess, but --

2 MS. ROSS: That's true, Your Honor, but the fact
3 remains that at the end of the day the issues would be
4 significantly narrowed in the later actions.

5 The real issue is, Your Honor, that GeoTag does not want
6 to be faced with defending this action in Delaware against the
7 real parties in interest in part because they have the
8 resources to defend this case, but also because they have the
9 motivation to defend this case wholeheartedly, while GeoTag
10 would rather proceed with their licensing and enforcement
11 program with the goal of leveraging these unmanageable
12 lawsuits into cost of defense settlements.

13 I think we can skip this. We talked about this a little
14 bit. The next two slides simply show the declarations by
15 Google and Microsoft and Where 2 Get It.

16 So as the Federal Circuit explained in Katz, it is the
17 manufacturer who is the true party in interest. It is the
18 party that should be afforded the ability to defend its
19 customers and defend its products.

20 The Provider's Locator Services are a part of their
21 ongoing business efforts. They have and expect to receive
22 many more indemnity requests from thousands of customers yet
23 to be named. The manufacturers host and operate and maintain
24 the accused Locator Services. They design and manufacture
25 these services, and they possess all the relevant knowhow

1 regarding these services. As such, they are the true parties
2 in interest.

3 The Federal Circuit recently reconfirmed that the
4 manufacturer's case need not resolve every issue. It just has
5 to have the potential of resolving the major issues. Here, as
6 we discussed moments before, that possibility exists. A
7 resolution of the Delaware action could resolve all --
8 possibly part of the issues present in Texas. An invalidity
9 finding would resolve all 18 cases against more than 450
10 Defendants. A finding of infringement would resolve the
11 claims against the Texas Defendants who use the Microsoft,
12 Google and Where 2 Get It systems. A finding of infringement
13 would resolve GeoTag's -- would exhaust GeoTag's claims to
14 damages against those Texas Defendants using Microsoft, Google
15 and Where 2 Get It locator systems.

16 In addition, and this I think is an important factor,
17 they would be able to receive money damages from a broader
18 range of Defendants that have yet to be sued by GeoTag in the
19 Delaware action.

20 And as we touched on earlier, we believe that it would
21 significantly narrow the Court's attention -- significantly
22 narrow the issues that would be present for the Court in claim
23 construction.

24 The Movants have agreed to be bound by the final
25 determination of invalidity. So in deciding the stay,

1 prejudice to the nonmoving party and simplification of the
2 issues are among the relevant factors that should be
3 considered.

4 All the Texas cases are in their infancy, other than the
5 Yellowpages and Frontier cases. No trial date has been set.
6 No discovery has been had. In fact, GeoTag continues to add
7 new suits against new defendants with no end in sight.
8 Therefore, the posture of the Texas cases remains in flux.

9 GeoTag's only claim to prejudice, Your Honor, is that the
10 Texas actions could be on hold for three years. Even assuming
11 that GeoTag's three year timing is accurate, GeoTag's claim to
12 damages for the unexhausted Texas Defendants would remain
13 untouched. The stay would provide them with the ability to
14 pursue the real party in interest without the division of
15 resources between the Texas and the Delaware cases, and if
16 GeoTag wins in Delaware, they would obtain money damages from
17 the Delaware Plaintiffs for the Texas Defendants' accusations
18 of infringement, as well as the tens of thousands of other
19 customers yet to be sued.

20 GeoTag's resistance to the Delaware action speaks
21 volumes. GeoTag's intent and their goal is simply to present
22 the Texas Defendants with this Hobson's choice that Judge
23 Davis referred to.

24 Proceeding with the case in Delaware promotes judicial
25 efficiency in part because it is between GeoTag and the true

1 parties in interest, and is manageable because it involves
2 four parties. In sharp contrast, the Texas cases present the
3 impossible task for the Court to manage, which is now 18 cases
4 and more than 450 Defendants.

5 THE COURT: I don't know if impossible -- difficult.

6 MS. ROSS: Difficult. Nearly impossible. Judicial
7 efficiency is also promoted because the issues will be
8 simplified for trial. At best, the entirety of the Texas
9 actions could be resolved, and, at worst, issues of claim
10 construction, enforceability, and infringement would be
11 narrowed.

12 With the Court's permission, and if I have any time
13 remaining, I'd like to reserve the balance of my time.

14 THE COURT: You have --

15 THE CLERK: Fourteen seconds.

16 THE COURT: You have fourteen seconds remaining.

17 MS. ROSS: All right. Thank you very much, Your
18 Honor.

19 THE COURT: Response.

20 MR. BUETHER: I feel like I'm in a dual and they've
21 shot their gun and I just have one bullet left, you know, with
22 only fourteen seconds.

23 I want to make a few remarks about what I just heard,
24 which appears to be an argument for what I would call the mass
25 infringement exemption to a plaintiff's right to choose its

1 defendants and its forum. Somehow there is a suggestion here
2 that the bigger the victim the less rights you have because it
3 poses some management challenges, which this case certainly
4 does.

5 THE COURT: Well, some is an understatement.

6 MR. BUETHER: Well, it probably is, and it is, but I
7 mean the --

8 THE COURT: Impossible is wrong on one extreme. Some
9 on the Plaintiff's comment is the other extreme.

10 MR. BUETHER: From a management standpoint, the
11 Defendants' motion or the Movants' motion is really to deal
12 with the management difficulties by burying the case. They
13 want to hijack our lawsuit and take it to Delaware and then
14 bury it there, because nothing is happening over there and
15 there is no foreseeable action in the future right now.

16 THE COURT: So the motion, I know I asked if there
17 had been a ruling on the motion. I assume it hasn't been
18 heard at this point?

19 MR. BUETHER: There has been no activity, no sign of
20 life at all there. And I want to point out that under our
21 proposal for a schedule, we are going to serve all of our
22 infringement contentions on November 21 for all of the
23 Defendants in the cases that are the subject of the scheduling
24 order and that are before you.

25 THE COURT: That's the YellowPage and Frontier?

1 MR. BUETHER: All the cases.

2 THE COURT: Okay, all the cases.

3 MR. BUETHER: All of the cases. So they will have
4 those infringement contentions, and some of the contentions
5 are -- I think reveal why this is not a good idea to transfer
6 or to stay this case in deference to Delaware.

7 And fundamentally, the courts have acknowledged that
8 these motions to stay based upon the customer suit exception
9 are about a choice of forum issue. What is -- should there be
10 an exception to the plaintiff's right to choose the forum to
11 litigate its claims? And the rule is that the first suit,
12 which is this litigation, should have priority absent special
13 circumstances. And a stay of the first-filed suit is done to
14 prevent a wrong or an injustice. And the customer suit
15 exception is an exception to the general rule that favors the
16 forum of the first-filed action. The courts have been
17 consistent on that.

18 The Movants simply haven't shown why it would be
19 beneficial and in the interest of justice, as opposed in their
20 interest, to stay all of these cases, deprive GeoTag of the
21 ability to proceed with its claims and win or lose on them.
22 If they have no merit, they can file summary judgment motions
23 or other motions to deal with that. If they do, there is no
24 reason to freeze the vast majority of the Defendants that have
25 no association with Microsoft, Google, or Where 2 Get It,

1 because Microsoft --

2 THE COURT: I thought that was only like 34 percent
3 that hadn't.

4 MR. BUETHER: Well, that's a -- actually, that's not
5 an accurate figure. I mean, I think they said that there
6 are --

7 THE COURT: What is an accurate figure?

8 MR. BUETHER: They said that they have customers.
9 They are customers of Microsoft. That does not mean that they
10 are being hosted by Microsoft or Google to provide this
11 technology. And that's a key thing here. We are not
12 accusing, we are not saying they infringe because they use
13 Google Maps or because they use Bing Maps. But yet that's
14 what the Delaware dec action alleges, that Bing Maps and
15 Google Maps don't infringe.

16 THE COURT: What are you alleging?

17 MR. BUETHER: We are alleging that these Defendants
18 use a technology on their website. Often, they are called
19 store finder, or store locator, or dealer locator, which is a
20 database management technology, how you organize your database
21 and whether you organize it in a hierarchical fashion by
22 geography from a larger geographic expanse to a lower one, and
23 then you associate topics with those geographical hierarchies,
24 and then there is a search engine that will execute a search
25 and present to the user information that is sorted by these

1 geographical hierarchies, the topics related to these
2 hierarchies. There is no claim that if you use Google Maps or
3 Bing Maps, ergo, you infringe. This is not a mapping patent.
4 It's about database organization and search.

5 And so that's why I say they are hijacking our lawsuit is
6 that they filed a dec action in Delaware saying that we want a
7 declaration that if you use Bing Maps or Google Maps you don't
8 infringe, when we are not making that accusation. And it's
9 really just an attempt to kill this lawsuit, stifle it, and
10 then freeze it up in Delaware. And they haven't met their
11 burden, their heavy burden.

12 The Supreme Court in the *Landis* case, 1936, said: parties
13 seeking a stay must make out a clear case of hardship or
14 inequity in being required to go forward. If there is any
15 possibility that the stay will work damage on another party,
16 that should not happen. And only in a rare circumstances will
17 a litigant in one cause be compelled to stand aside while a
18 litigant in another settles the rule of law that will define
19 the rights of both.

20 And so the customer exception suit just simply doesn't
21 apply here. And I think one of the significant factors is the
22 customer suit exception is routinely applied where there is a
23 reseller of a manufactured product. In fact, that's what the
24 *Tegic* case said. There are three factors. One is whether the
25 customer defendant in the earlier filed case is merely a

1 reseller.

2 That's not the case here. These Defendants that operate
3 these store finders or store locators and other technology. By
4 the way, a careers site where you can search careers
5 geographically or other offers made through their website that
6 have a geographical search function, these are not -- they are
7 not reselling something that Microsoft or Google sells to
8 them. That's where the customer suit exception applies.

9 Microsoft and Google, at best, are simply providing a
10 component of the technology that infringes. And Judge Davis
11 in the CSIRO case cited the case law that says: merely
12 providing a technological component is not enough to justify
13 the customer suit exception to be applied.

14 The second factor to be considered is whether the
15 customer defendant agrees to be bound by any decision in favor
16 of the patent owner. Well, we've got a qualified agreement.
17 They'll accept the invalidity determination but not any
18 infringement determination. So if there is a finding of
19 infringement up there, we are going to have to be down here
20 again litigating that again, unless they accept it. But they
21 don't agree to be bound by that. So that factor doesn't favor
22 an exception here.

23 And then finally the other issue is whether the
24 manufacturer is the only source of the infringing product, and
25 that's not true either. I believe that over 280 Defendants

1 use multiple technology providers to provide their service,
2 and only -- only a handful -- a handful, maybe 50 or 60, use
3 just one single third-party provider.

4 So no factors here justify trying to have the Delaware
5 court decision determine the outcome of the claims against any
6 of the Defendants in this case. That determination will have
7 virtually no outcome determinative effect.

8 On damages, we are not seeking -- there will be no
9 exhaustion as a result of the outcome in Delaware, because the
10 damages we are seeking from the users are different from what
11 we are seeking against any technology provider. We are
12 seeking from the technology providers only damages for their
13 own use. We are not trying to get damages from a Where 2 Get
14 It for their enabling other Defendants to infringe the patent.
15 That is not -- we are seeking only -- we are accusing the
16 providers only of their own infringement. We are not accusing
17 them of indirect infringement by enabling third parties.

18 And that's another reason why there is not a good reason
19 for a stay here is indirect infringement in Delaware will
20 require intent and notice of the patent and all kinds of
21 issues that aren't required to be litigated down here. So a
22 trial on indirect infringement in Delaware would tell us very
23 little about what should be done down here.

24 But going back to the fact that the Defendants are not
25 resellers, they are the real parties in interest here, it's

1 their website that is being accused. It's their customized
2 store locator or careers feature that is built for their
3 website and their content that is being accused of
4 infringement. So it's their functionality that is unique to
5 them that is being challenged. This is not a case of
6 Microsoft producing Word on a CD and then sending it to the
7 stores for, you know, the retailers to sell. And the real
8 value is in the original product made by Microsoft and not the
9 use of that technology by the end user.

10 Here, the real value of this technology resides at the
11 end user retailer location where they are using this
12 technology to drive additional business into their stores.
13 That's where the value is, that's where the damages are, and
14 that makes the retailers the real parties in interest by a
15 long shot.

16 And another point on this is that since Microsoft is
17 indemnifying so many of these customers of theirs, they are
18 here. You know, the argument about the customer exception is
19 that we should let the manufacturer fight the battle because
20 they have more stake in it than the mere reseller. And, as I
21 said, that mere reseller doesn't even exist here. But apart
22 from that, Microsoft is here. The same vigorous defense that
23 we would see up in Delaware will be presented here.

24 You see all of the august lawyers and law firms that are
25 down here. This is not a situation where somebody is picking

1 on some poor store front to try and get damages where that
2 company doesn't have the ability to defend itself. Microsoft
3 is going to be litigating the issues in this court for sure.
4 We know that because they have told you they are indemnifying
5 these parties.

6 So why should we have to trek to Delaware, delay this
7 case substantially and deprive GeoTag of going forward on its
8 claims? And the reason they want to do that is to delay and
9 stall. But as you can see, there's no harm to these end-user
10 Defendants that are indemnified by Microsoft by going forward
11 down here, because they are going to have Microsoft's lawyers
12 making their case for them here.

13 The other problem is that the evidence here just doesn't
14 show that what is being accused here is solely provided by
15 Microsoft or Google. Once again, they focus on their Bing
16 Maps and Google Maps functionality, but that's only -- that's
17 not even -- you don't even need that to infringe. And, at
18 most, it's only a component or a part of the system or method
19 that is being accused.

20 And that's another good thing to point out here. We are
21 not dealing with an apparatus claim with a product. We are
22 dealing with systems and methods which are software based, and
23 most courts that have looked at that have said the customer
24 suit exception really isn't designed for that, because, again,
25 you don't have this mere reseller situation. You've got some

1 software being provided to an end user in a much larger
2 context, such as a website, for purposes that the manufacturer
3 has no connection with or cares about. And so the fact that
4 these are method and system claims being asserted here, you
5 need the end users who are the direct infringers and who are
6 the real parties in interest that make the money off of that
7 technology in this case being forced to defend their action,
8 rather than freezing all of that and going up to Delaware to
9 really litigate a phantom lawsuit that doesn't involve what
10 GeoTag is claiming is infringing. How much time do I have
11 left?

12 THE CLERK: Three minutes.

13 MR. BUETHER: Three minutes. So the Delaware
14 lawsuits will not resolve GeoTag's infringement and damages
15 claims, and although certainly any dec action on the
16 invalidity side would, but then you would be turning the
17 customer exception into the rule that anyone who files a dec
18 action with a claim of invalidity would say, well, that's
19 where we ought to litigate all this because that will clearly,
20 you know, end the lawsuit if it's successful. The court, no
21 court has ever accepted that argument to overturn and
22 undermine the plaintiff's choice of forum and the right to
23 litigate the claims where it has chosen, and that is here in
24 Texas.

25 This case is manageable. We'll get to that shortly, but

1 staying this case will not eliminate duplicative litigation.
2 It will foster it. It will increase it because we'll have to
3 come back here if there's an infringement finding and
4 relitigate all of that again. And the courts have said that
5 is a very strong reason not to grant such a stay.

6 If the Court has any further questions --

7 THE COURT: No. I understand your position.

8 MR. BUETHER: Okay. Thank you, Your Honor.

9 THE COURT: You have fourteen seconds.

10 MS. ROSS: If I take slightly longer, will you
11 object?

12 THE COURT: Well, it depends on what slightly longer
13 is.

14 MS. ROSS: Okay. I'll do my best to resolve this
15 very quickly.

16 THE COURT: Well, do you agree the Defendants have
17 not entered into any sort of stipulations concerning
18 infringement and damages, that essentially the stipulation
19 goes as to invalidity?

20 MS. ROSS: I would love to address that, Your Honor.
21 The reason why the Movants have not agreed to be bound by the
22 infringement determination is really complicated. It's
23 complicated in part because just the coordination among 81
24 Defendants is a difficult task, and getting them to agree to
25 the precise language that existed within the motion itself was

1 an inordinate task.

2 The other reason why --

3 THE COURT: So I guess the answer is no, they haven't
4 agreed?

5 MS. ROSS: Well, they haven't. I will say, Your
6 Honor, though, that a finding of noninfringement in Delaware
7 would apply to the Defendants in Texas that are using the
8 Microsoft, Google, and Where 2 Get It systems. A finding of
9 infringement in Delaware would also apply to the Defendants in
10 Texas that are using those specific systems at issue in
11 Delaware.

12 And with respect to Mr. Buether's claim about exhaustion
13 in Delaware, they are trying to argue that the difference in
14 damages theories against a Google, Microsoft, and Where 2 Get
15 It is simply different than a damages theory that would exist
16 against the customer retailers here in Texas. Exhaustion
17 would still exist. They would just have a different theory
18 underlying their damages claim.

19 THE COURT: Very well. I think you have taken enough
20 time or the Plaintiff is going to want some more time.

21 MS. ROSS: Very well. Thank you, Your Honor.

22 THE COURT: Very well. Now, I don't know who is
23 involved in the management issues in this case.

24 MR. BUETHER: It's primarily me and Mr. Bittner have
25 been doing the hard work, although --

1 THE COURT: Well, then I will shorten your hard work
2 perhaps. As the parties well know, I inherited this case upon
3 Judge Ward's retirement, and but for his retirement, under our
4 practice he had the first filed case and he would have had all
5 of these cases. Maybe there was one he was disqualified in.
6 And my service in this case at most is to March 17th, and
7 perhaps only a few weeks. So I'm not inclined to, and I think
8 it's premature to try to enter some universal management
9 control order that's going to take care of this case for all
10 times, because I don't think, one, it's possible if I don't
11 grant the Motion to Stay.

12 So here's what I am going to suggest. We are not going
13 to enter a scheduling order today in any of these cases, new
14 cases, until I address the Motion to Stay, and I promise to do
15 that within the next few weeks. If I grant the stay motion,
16 we need not worry about this. If I don't grant it, I'm going
17 to give you a little direction on where I see some of these
18 issues going. One, the Plaintiff has provided a rather
19 detailed, complex trial grouping and bifurcation. I think
20 it's way too early to start talking about that. I don't know
21 enough about the case nor do the parties. And perhaps the
22 parties do. I think it's premature to start going into the
23 detail the Plaintiff suggests.

24 On the other hand, if I understand the Defendants'
25 proposal, we are going to enter a separate scheduling order

1 for all of these cases and let them go their merry way. Well,
2 I'm not going to do that. And maybe that's not the
3 Defendants' position.

4 I am assuming everyone agrees that there should be a
5 common, if the case is not stayed, a common claim construction
6 hearing. Is that correct?

7 MR. DURST: Correct.

8 MR. BUETHER: Yes.

9 THE COURT: Everyone agrees upon that. And maybe you
10 are talking in terms of fall of next year, is that correct?

11 MR. BUETHER: Yes.

12 THE COURT: You know, if I were going to be here for
13 another two or three or four years, I would say we need to
14 move that date up even more, if at all possible, and have a
15 claim construction hearing as quickly as possible. But I
16 don't know if that, under the circumstances, is possible. I
17 can give the Plaintiff some guidance. My rule is you are down
18 to ten claims before claim construction.

19 MR. BUETHER: I conceded that before you --

20 THE COURT: Okay. Wise concession.

21 MR. BUETHER: Thank you.

22 THE COURT: If your position still is that a party
23 must show good cause before they have another bite at claim
24 construction, you should concede that. If you haven't, that
25 will be denied. I think probably the opinion I gave in a

1 Texas Instrument case was cited in some fashion. But I am
2 convinced all the Defendants that want a new hearing on Judge
3 Everingham's claim construction is entitled to it.

4 I am not going to start to talk about the number of hours
5 for the various witnesses and the experts. But what I am
6 basically saying, if this case is not stayed, it's not going
7 to be me that's going to be managing this case for two or
8 three years. It's going to be someone else and that judge
9 should be making a lot of these long-term decisions on trial
10 dates and management and those sort of things. But if I have
11 this case more than a few weeks, I think something needs to be
12 done if I don't stay it to start the process so progress can
13 be made between now and March 17th.

14 So I am going to direct, if I don't stay the case, then
15 ever who is dealing with these management issues, that you
16 have these general thoughts of mine on what I will and will
17 not do. I think everyone, if this case is not stayed, you are
18 going to have to, if at all possible, work in some fashion to
19 streamline this case and make it -- you know, it's not
20 impossible to manage, but it's not going to be easy to manage.
21 We have those two extremes. And this case obviously falls
22 more near the impossible stage versus some difficulty stage.

23 I am going to direct the parties, and obviously I've
24 already been directed to that, to Judge Davis' opinion in the
25 *Uniloc* case and what is it, *Parallel Networks* cases, that you

1 need to look to that for some guidance on perhaps how to
2 approach this, because I think he makes some very good
3 suggestions on cases involving in his case over a hundred
4 defendants, in this case approaching 500. So there is going
5 to be the need, again I stress, if not stayed, for the parties
6 to make real hard efforts to come up with some type of plan to
7 streamline this case and make it where the judge that's
8 presiding over it and the parties are able to manage it and
9 move it forward.

10 Now there was some mention, and I don't know if the
11 Plaintiff has backed off on maybe no summary judgment. I
12 wouldn't impose that. If this case can be decided earlier
13 rather than later by summary judgment, well and fine.

14 So I am giving the parties some guidance on what I would
15 do and what I wouldn't do, and I would be directing the
16 parties that after I rule on the Motion to Stay, if we need to
17 go forward with a scheduling order, to come back with some
18 plan, taking into account my comments, Judge Davis' orders in
19 those two cases that I have mentioned, and come back with
20 hopefully some general agreement on how to go forward. If
21 not, at least proposals from the parties or groups of parties
22 on your thoughts on how this case should go forward.

23 But my thoughts are if a claim construction hearing can
24 be set even before next fall that the parties should consider
25 that. But it goes without saying that the judge that receives

1 this case is going to have to -- you are going to have to
2 accommodate that judge's schedule in some fashion. So that's
3 probably, even though I might enter some orders in that
4 regard, I don't know how long term they are going to be good
5 with someone else's schedule.

6 Have I given the parties some guidance? And I apologize
7 for not perhaps taking all this up, but I think a lot of this
8 is premature, and these cases, some of them have been on file
9 since 2010, and a few more weeks I don't believe is going to
10 matter without an order in place.

11 MR. BUETHER: Can I make a few comments, Your Honor?
12 Well, I wanted to bring one thing to your attention in terms
13 of how you pass the baton. I noticed the other day, I just
14 happened to be looking at --

15 THE COURT: I like to try to do that occasionally,
16 yes.

17 MR. BUETHER: I was looking at some pleadings in the
18 case that was already litigated extensively, the *Geomas* case
19 which generated the claim construction order, and I noticed on
20 the docket sheet that Mr. Gilstrap was counsel for the
21 defendant in that case. I just wanted to point that out.

22 THE COURT: That's not something I need to sign now.
23 That's why I say within a few weeks, or at most March 17th.

24 MR. DURST: I think that's mistaken. I was counsel
25 for the defendant in that case.

1 MR. BUETHER: Well, he was counsel for one of the
2 defendants in that case, I believe.

3 THE COURT: Well, I am not here to determine any
4 recusal issues.

5 MR. BUETHER: No, no. I just wanted to let you know
6 about that.

7 THE COURT: I think I have been on the bench long
8 enough to realize that's a possibility.

9 MR. BUETHER: Well, I didn't even realize it until a
10 couple of days ago.

11 THE COURT: Let's move on to something more
12 productive.

13 MR. BUETHER: Okay.

14 THE COURT: Is that the only comment you wish to
15 make?

16 MR. BUETHER: The only other thing is that on the
17 Uniloc and the *Parallel Networks* case, well, especially on
18 *Uniloc*, and I think this case is --

19 THE COURT: I don't want to debate. I just want the
20 parties to look at that and try to come up with some plan. If
21 for whatever reason you feel none of Judge Davis' management
22 styles have merit, I guess you can let me know.

23 MR. BITTNER: That's agreeable, Your Honor.

24 THE COURT: Very well, anything else? We will be in
25 recess.

1 (Adjourned at 11:54 a.m.)

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REPORTER'S CERTIFICATION

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5 I certify that the foregoing is a correct transcript from
6 the record of proceedings in the above-entitled matter.

7

Dated this 28th day of November, 2011

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/s/Libby Crawford
Libby Crawford, CSR, CVR
Official Court Reporter

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